BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

SILVIA LOPEZ Claimant	)	
V.	)	
JOHNSON CONTROLS, INC. Respondent	)	Docket No. 1,071,856
AND	)	
INDEMNITY INS. CO. OF N. AMERICA Insurance Carrier	)	

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) requested review of the December 31, 2014, preliminary hearing Order entered by Administrative Law Judge (ALJ) Gary K. Jones. Thomas E. Hammond of Wichita, Kansas, appeared for claimant. Vincent Burnett of Wichita, Kansas, appeared for respondent.

The ALJ found claimant sustained her burden of proving her accident arose out of and in the course of her employment with respondent. The ALJ ordered respondent to pay all medical bills related to the accident and provide claimant a list of two orthopedic surgeons from which to choose a treating physician. The ALJ also ordered temporary total disability benefits from October 31, 2014, through December 14, 2014.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the December 23, 2014, Preliminary Hearing and the exhibits, together with the pleadings contained in the administrative file.

ISSUES

Respondent argues the greater weight of credible evidence proves claimant did not sustain an accidental injury arising out of and in the course of her employment; therefore, claimant is not entitled to workers compensation benefits.

Claimant contends the ALJ's Order should be affirmed in all respects.

The sole issue for the Board's review is: did claimant suffer an injury by accident arising out of and in the course of her employment with respondent?

FINDINGS OF FACT

Claimant was employed by respondent as a machine operator, a position requiring use of both hands. Claimant stated she worked from 6:00 a.m. to 3:30 p.m., full-time, with an additional 16 hours of overtime most weeks. Claimant required an interpreter at the hearing because she understands only some English. She stated she could not write in English.

Claimant testified she sustained an injury on October 22, 2014, at approximately 2:55 p.m. when a door closed on her right hand. She explained:

> (By the Interpreter) When my group leader left, told me to clean the coffee maker. I grabbed the coffee maker, I took it to the lounge room and I – to wash it. I was carrying it in my hand, and when I opened the door to enter the lounge, I don't know how the door came onto my – on my hand.[1]

The door to the lounge has a handle on the left side with hinges on the right, opens from left to right, and is equipped with a self-closing mechanism.[2] Claimant indicated her right hand became pinned between the door and the door frame when the door closed as she walked into the lounge. Claimant could not explain the mechanics of the accident.

Claimant testified she felt no pain after the accident, but she did feel heat in her right hand and fingers. Claimant said she cleaned the coffee maker and completed her shift following the incident, though she explained the last 30 minutes of her shift consisted of cleaning her area and speaking with her coworkers about the incident. She did not formally report the accident to respondent at that time because she did not initially feel she suffered a serious injury. Claimant testified:

> Q. You did not go to medical that day?
>
> A. (By the Interpreter) No.
>
> Q. Why?
>
> A. (By the Interpreter) Because when I saw my fingers, I just felt this heat and I didn't feel pain so I thought it wasn't anything that bad. My pinkie finger had a cut, a small cut on it, and it was bleeding, but it was not that much.

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[1] P.H. Trans. at 13.

[2] See *Id.*, Resp. Ex. A.

> Q. Why did you report it the next day?
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> A. (By the Interpreter) Because an hour or two hours after I arrived home, I got home, I started feeling a lot of pain in my fingers; I even took some pills for the pain. And the next day I went to medical because my fingers were swollen, very swollen.[3]

On October 23, 2014, claimant reported the incident to her supervisor. The incident report lists Daniel Cousins, claimant's coworker, as a witness to the accident. Claimant testified Mr. Cousins was present at the time, but she could not state whether he witnessed the accident. Mr. Cousins submitted a written statement affirming he "did not physically see the door shut on [claimant's] hand."[4]

Claimant was referred to respondent's nurse on October 23, 2014. The nurse referred claimant to Dr. Benjamin Norman at Via Christi Clinic later that day. After performing an examination, Dr. Norman diagnosed claimant with a crush injury to the right ring and little fingers and an open tuft fracture to the little finger. Dr. Norman placed claimant on restrictions, provided medication, and recommended she see an orthopedic hand specialist as soon as possible. Claimant returned to work for respondent in an accommodated position.

Holly Wedel, respondent's safety manager, performs incident investigations for respondent. Ms. Wedel interviewed claimant on October 23, 2014, after learning of the incident. Ms. Wedel stated it is respondent's policy to report any incident, even minor incidents. Claimant agreed she was aware of respondent's accident reporting policy. Ms. Wedel testified claimant's delay in reporting the accident was a "red flag."[5]

During the interview, claimant described the accident to Ms. Wedel. Ms. Wedel testified claimant gave no other history as to how she injured her hand, although Ms. Wedel noted claimant's supervisor told her that other employees knew of a conflicting story involving claimant's right hand and a car door. Ms. Wedel stated she interviewed the employees, but none could substantiate the car door rumor. Claimant denied having told anyone she injured her hand with a car door.

Ms. Wedel testified that during the interview she asked claimant to recreate the accident, but claimant was unable to give an explanation as to how her fingers became caught in the door. Ms. Wedel also performed testing on the door in question. She described:

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[3] P.H. Trans. at 19-20.

[4] *Id.*, Resp. Ex. C.

[5] P.H. Trans. at 64.

> I took two tongue depressors from medical to see what would occur when the door closed. I also opened the door and let it close on its own. When it closes on its own, it goes slowly, and at the very end, it moves slightly faster. When I put two tongue depressors together in the point of operation, then it – when the door was allowed – was opened and allowed to close on its own on those, it did not have an impact on those tongue depressors. But when I used one, it would bend it slightly.[6]

Ms. Wedel testified she did not believe claimant's fingers were injured by the closure of the door. Ms. Wedel explained her opinion was based on a combination of the interview with claimant, the reenactment, and the testing performed on the door. Ms. Wedel reported her findings to respondent, and workers compensation benefits were denied.

Claimant began treatment with her personal physician, who continued the temporary restrictions imposed by Dr. Norman. Claimant was off work from October 31, 2014, through December 14, 2014. She returned to work for respondent on December 15, 2014.

PRINCIPLES OF LAW

K.S.A. 2013 Supp. 44-508(h) states:

> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 2013 Supp. 44-508(d) states:

> "Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

K.S.A. 2013 Supp. 44-508(f) states, in part:

> (1)"Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

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[6] *Id*. at 68.

(2)(B) An injury by accident shall be deemed to arise out of employment only if:

> (I) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
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> (ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

K.S.A. 2013 Supp. 44-508(g) states:

> "Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[7] Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.[8]

ANALYSIS

Claimant's testimony supports the ALJ's finding of an injury by accident in the course of her employment with respondent. Claimant identified the accident by time and place of occurrence and described symptoms of an injury consistent with the accident. The history of injury and findings recorded by Dr. Norman are consistent with claimant's history of injury. There is no credible evidence supporting a finding that claimant's injury occurred in any other manner.

Respondent argues that a tongue depressor test conducted by Ms. Wedel proves the accident could not have happened the way claimant alleges. Respondent's tongue depressor experiment findings are unpersuasive. The photograph of the door shows a heavy metal door capable of causing the type of injury and physical damage alleged by claimant and documented by Dr. Norman.

Respondent also argues a delay in reporting the injury that makes claimant's history of injury suspect. Claimant was injured with 35 minutes left in her shift. She reported the

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[7] K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, *rev. denied* 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, *rev. denied* 271 Kan. 1035 (2001).

[8] K.S.A. 2013 Supp. 44-555c(j).

injury an hour before her next shift started.[9] Claimant testified although her finger was bleeding, she felt only a heat sensation in her right hand and fingers and did not think the injury was serious. Under the circumstances, claimant reported her injury in a reasonable amount of time.

Respondent states in its brief that claimant stated Mr. Cousins saw her accident, contrary to Mr. Cousins' statement. This allegation is not supported by the record. Claimant testified only that Mr. Cousins was in the room.[10] Claimant did not know if Mr. Cousins witnessed the accident.

CONCLUSION

Evidence exists to support the ALJ's findings. Claimant suffered an injury by accident in the course of her employment with respondent, and the reported accident was the prevailing factor causing claimant's injury and need for treatment.

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Gary K. Jones dated December 31, 2014, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February, 2015.

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HONORABLE SETH G. VALERIUS
BOARD MEMBER

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Gary K. Jones, Administrative Law Judge

[9] See P.H. Trans., Cl. Ex. 1 at 1.

[10] See P.H. Trans. at 41.